

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Augusta Division

IN RE:	)	Chapter 13 Case
	)	Number <u>91-10825</u>
RICKEY TURNER	)	
CAROLYN TURNER	)	
	)	
Debtors	)	
_____)	)	
BARNEE C. BAXTER, JR.,	)	FILED
CHAPTER 13 STANDING TRUSTEE	)	at 3 O'clock & 46 min. P.M.
	)	Date: 1-29-92
Movant	)	
vs.	)	
	)	
RICKEY TURNER	)	
CAROLYN TURNER	)	
	)	
Respondents	)	

**ORDER**

The Chapter 13 trustee objects to confirmation of the debtors' proposed plan contending there is sufficient equity in debtors' mobile home to require that debtors' Chapter 13 plan pay all unsecured creditors in full, rather than a pro rata dividend as proposed by the debtors. Debtors, Rickey Turner and Carolyn Turner, claim the entire equity in their mobile home is exempt under I applicable law and that their pro rata Chapter 13 plan is confirmable.

Debtors filed a joint Chapter 13 petition on May 7, 1991.

Debtors' schedules reflect joint ownership of a 1991 24' X 70' Fleetwood mobile home ("the mobile home"), which they purchased in November 1990 for \$30,000.00. The debtors' schedules value the mobile home at Twenty Three Thousand Seven Hundred Fifty-Seven and 20/100 (\$23,757.20) Dollars. Based on the testimony of each debtor at hearing, the current fair market value of the mobile home for plan confirmation purposes is Twenty-Four Thousand and No/100 (\$24,000.00) Dollars. There are no

liens against the mobile home. Allowed unsecured claims in this case total Three Thousand One I Hundred Seventy and 24/100 (\$3,170.24) Dollars. The debtors' plan originally proposed a payment of \$100.00 weekly (\$430.00 per month) to the trustee for 60 months. The debtors have increased the payment to Four Hundred Eighty-One and No/100 (\$481.00) Dollars per month. The trustee projects a dividend to unsecured creditors of approximately 50%.

Mr. Turner testified that he served for 16 years with the United States Marine Corps. On October 23, 1990 Mr. Turner was discharged due to a neck injury which made it impossible for him to perform his job duties. Mr. Turner was given the option of receiving a 10% disability pension or a lump sum payment of Thirty - Seven Thousand and No/100 (\$37,000.00) Dollars, and chose the lump sum payment. The mobile home was purchased with the disability benefits. Debtors initially contended that the mobile home is exempt pursuant to O.C.G.A. §44-13-100(1) and (11)(D). In their

brief submitted following the confirmation hearing, debtors now contend that the equity in the mobile home is exempt under O.C.G.A. §44-13-100(2)(B) and 45 U.S.C. §352(e) as being traceable to a veteran's benefit.

#### **CONCLUSIONS OF LAW**

Under 11 U.S.C. §1325(a) the bankruptcy court may not confirm a Chapter 13 plan unless

the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title [11] on such date . . . .

11 U.S.C. §1325(a)(4).

The bankruptcy estate, as defined by 11 U.S.C. §541(a), for purposes of the liquidation analysis required by §1325(a)(4), does not include property which the debtors are entitled to exempt. 11 U.S.C. §522(b). Georgia has opted out of the federal scheme of exemptions pursuant to §522(b) and sets forth its own list of

exemptions in Official Code of Georgia Annotated (O.C.G.A.) §44-13-100, which determines, along with any applicable federal exemption statutes, excluding 11 U.S.C. §522(d), see §522(b)(2)(A), what property debtors can exempt in their Chapter 13 case. O.C.G.A. §44-13-100 provides in pertinent part:

(a) In lieu of the exemption provided in code section 44-13-1, any debtor who is a natural

person may exempt, pursuant to this article, for purposes of bankruptcy, the following property:

(1) The debtor's aggregate interest, not to exceed \$5000.00 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence . .

(2) the debtor's right to receive: . . .

(B) a veteran's benefit; . . .

(6) the debtor's aggregate interest, not to exceed \$400.00 in value plus any unused amount of the exemption provided under paragraph (1) of this subsection, in any property; . . .

(11) The debtor's right to receive, or Property that is traceable to: . . .

(D) A payment, not to exceed \$7,500.00, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent. .

(emphasis added)

In their petition, debtors contend they may exempt the equity in their mobile home pursuant to O.C.G.A. §44-13-100(a)(1) and (11)(D). Under O.C.G.A. §44-13-100(a)(1) each debtor in a joint Chapter 13 case may exempt up to Five Thousand and No/100 (\$5,000.00) Dollars of his or her interest in real or personal property used as a residence. Debtors are therefore entitled to a combined exemption of Ten Thousand and No/100 (\$10,000.00) Dollars of the equity in their mobile home. Mr. Turner presented uncontradicted testimony that the benefits he received from the military were on account of a personal bodily injury. O.C.G.A. §44

13-100(11)(D) expressly provides that "property that is traceable to" a payment for a personal bodily injury is exempt, limited to

Seven Thousand Five Hundred and No/100 (\$7,500.00) Dollars. Mr.

Turner is entitled to an additional exemption of Seven Thousand Five Hundred and No/100 (\$7,500.00) Dollars of the equity in the mobile home. Under O.C.G.A.

§44-13-100(a)(1) and (11)(D), debtors are entitled to a total exemption of \$17,500.00, not \$23,757.20 as debtors claim in their petition.

In their brief debtors also contend that under O.C.G.A. §44-13-100(2)(B), and 45 U.S.C. §352(e)<sup>1</sup> the entire equity in the mobile home is exemptible as being traceable to a veteran's benefit. Debtors cite no authority in support of their argument that the Georgia exemption for a veteran's benefit, O.C.G.A. §44-13-100(2)(B), supra, extends to personal property purchased with money obtained as a veteran's benefit. Unlike the exempt payments specified in O.C.G.A. §44-13-100(11)(A) - (E), subsection (2)(B) does not expressly extend the exemption for a veteran's benefit to

property that is traceable to a veteran's benefit. Although there is apparently no Georgia case authority which has addressed the issue of whether the exemption for a veteran's benefit under O.C.G.A. §44-13-100(2)(B) extends to property traceable to veteran's benefit, debtors' position is inconsistent with Georgia case authority on a similar issue. See Hannah v. Hannah, 191 Ga. 134, 11 S.E.2d 779 (1940) (holding that personal property purchased with exemptible World War Veteran's Act benefits did not come within the exemption provided for by the Act).

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<sup>1</sup>45 U.S.C. §352(e) provides:

**Assignment, taxation, garnishment,  
attachment, etc., of benefits.**

Notwithstanding any other law of the United States, or of any State, Territory, or the District of Columbia, no benefits [received pursuant to 45 U.S.C. 351 et seq., "Railroad Unemployment Insurance"] shall be assignable or be subject to any tax or to garnishment, attachment, or other legal process under any circumstances whatsoever, nor shall the payment thereof be anticipated.

Accord Porter v. Aetna Casualty Surety Co., 370 U.S. 159, 82 S.Ct. 1231, 8 L.E.2d 407 (1962) [citing Carrier v. Bryant, 306 U.S. 545, 59 S.Ct. 707, 83 L.E.2d 976 (1935)]; Trotter v. Tennessee, 290 U.S. 354, 54 S.Ct. 138, 78 L.E.2d 358 (1933). Because O.C.G.A. §44-13-100(2)(B) does not expressly exempt property traceable to a veteran's benefit, as does subsection (11) for the exemptions outlined in that subsection, I conclude that the Georgia exemption for a veteran's benefit was not intended to include personal property purchased with the proceeds of such a benefit.

As to debtors' argument concerning 45 U.S.C. §352(e), that statute is not applicable to this case since Mr. Turner was not a railroad employee. Even assuming that Mr. Turner's disability benefits qualify for the federal exemption for veterans' benefits

found in 38 U.S.C. §5301(a),<sup>2</sup> the equity in the mobile home is not exemptible as the character of the exemption was lost when the funds were converted to personal property. See Porter, supra, 82 S.Ct. at 1233 n. 3 (holding that although the language in 38 U.S.C. §5301(a), then 3101(a), reads only that the exemption 'as to taxation' does not apply to property purchased with a veteran's benefit, benefits

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<sup>2</sup>38 U.S.C. §5301(a) provides in pertinent part:

Payments of benefits due or to become due under any law administered by the Veterans' Administration . . . shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments.

. . . .

invested in property are also nonexempt from the claims of creditors, citing Carrier, supra). Accord Hannah, supra.

Under O.C.G.A. §44-13-100(a)(1) and (11)(D), debtors are entitled to an exemption of Seventeen Thousand Five Hundred and No/100 (\$17,500.00) Dollars. Debtors have an additional exemption in the amount of Eight Hundred and No/100 (\$800.00) Dollars available pursuant to O.C.G.A. §44-13-100(a)(6), which has not been claimed for other property. Therefore, debtors may exempt a total of Eighteen Thousand Three Hundred and No/100 (\$18,300.00) Dollars of the equity in their mobile home. Debtors have Twenty-Four Thousand and No/100 (\$24,000.00) Dollars of equity in the mobile home. If the mobile home were liquidated, Five Thousand Seven Hundred and No/100 (\$5,700.00) Dollars would be available to pay the allowed claims of unsecured creditors. The allowed unsecured claims in this case total Three Thousand One Hundred Seventy and 24/100 (\$3,170.24) Dollars. Thus, in a liquidation of the debtors' assets, there would be enough money remaining after paying debtors the amount of their available exemptions to pay all unsecured creditor the amount of their claims in full. Debtors' Chapter 13 plan fails to meet the confirmation criterion of §1325(a)(4).

It is therefore ORDERED that the trustee's objection to confirmation is sustained;

further ORDERED confirmation is denied;

further ORDERED debtors have thirty (30) days from the date of this order to dismiss or convert their case to a Chapter 7 proceeding, or to amend their plan to meet the confirmation criterion of §1325(a)(4).

JOHN S. DALIS  
UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 29th day of January, 1992.